
(2007) 03 DEL CK 0162

In the Delhi High Court

Case No : E.A. No. 326 of 2005 in Ex. P. No. 18 of 2004

Morgan Securities Credit Pvt. Ltd.

APPELLANT

Vs

Blue Coast Hotels and Resorts Ltd.

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 1, Order 21 Rule 1(2), Order 21 Rule 2, Order 21 Rule 2(2), Order 22 Rule 2
Limitation Act, 1963 — Article 125
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 2 BC 548 : (2007) 139 DLT 479

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Vibhu Bakhru and Pooja Saigal, for the Appellant; Valmiki Mehta Rahul Srivastava and Suparna Srivastava, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—This application has been filed by the decree holder u/s 151 of the Code of Civil Procedure, 1908 praying for issuance of warrants of attachment in terms of column 10 of the execution petition. The decree holder has filed the execution petition pleading that it was entitled to recovery of Rs. 2,10,26,153/- as on 9th December, 2003 plus interest @ 30% with monthly rests.

2. In this application, it is averred that warrants of attachment were not pressed by the decree holder inasmuch as the judgment debtor put in an appearance through its counsel and wanted to make payments in installments. According to the decree holder, the judgment debtor has made certain payments. However, after 30th April, 2004, no payments had been made and still a sum of Rs. 57,81,009/- was due and payable on 22nd August, 2005. The applicant submits that the reason that this application has been necessitated was that the judgment debtor had given a cheque dated 28th February, 2005 for Rs. 50 lakhs. However, after issuance of the cheque, the judgment debtor had been orally requesting the decree holder not to present the said cheque and ultimately

when this cheque was presented on 16th August, 2005, the said cheque was returned dishonoured with the remarks "insufficient funds".

3. According to the decree holder, its request to the judgment debtor to make the payment has been avoided showing that they were not interested in making the payment in the near future. In these circumstances, it has been submitted that the decree holder is left with no option but to seek warrants of attachment in respect of bank accounts of the judgment debtor nos. 1 and 4 which have been detailed in para 7 of this application. The decree holder has also prayed that in addition to the amount of Rs. 57,81,009/-, interest @ 30% with quarterly rests is also payable with effect from 22nd August, 2005 till the date the payment is actually made to the decree holder.

4. This application has been vehemently opposed on behalf of the judgment debtor. Appearing for the judgment debtor, Mr. Valmiki Mehta, learned senior counsel has contended that the judgment debtor has effected payment of the entire decretal amount and had served a letter dated 29th April, 2004 on the decree holder in this behalf. According to the judgment debtor, the payment which was made on this date was in terms of the advice given by the decree holder itself. The judgment debtor has made a statement to this effect before this Court on the 5th of March, 2004 and 6th July, 2004 when the statement of payments made was also furnished to the decree holder through its counsel who had sought time to verify the position. Inasmuch as the submission on behalf of the judgment debtor was not disputed by any point of time, according to the judgment debtor, the payment tendered by it was in full satisfaction of the decree. It has been submitted that for this reason, this execution was thereafter not pressed by the decree holder.

5. The judgment debtor has also vehemently disputed that the cheque of Rs. 50,00,000/- which was deposited for payment by the decree holder in August, 2005 had not been tendered in terms of any dues under the decree in the present execution petition and that the decree holder had banked the same dishonestly.

6. According to the judgment debtor, it had adequately informed the decree holder and apprised this Court of the fact that it had made full payment; that the decree stood satisfied and that adequate opportunity had been given to the decree holder to show cause against the same in the light of the requirement in law. For this reason, it is submitted, that this application is mala fide and misconceived and deserves to be rejected. The application is also vehemently opposed on the ground of concealment of material facts by the judgment debtor. It is contended that the application has failed to disclose not only the payments made by the judgment debtor but also the fact that the cheque had not been issued in discharge of any liability in the present execution petition.

7. I have heard learned Counsels at great length and given my considered thought to the submissions which have been made in support of their respective

contentions. It has been pointed out that this execution petition was filed by the decree holder on or around the 12th of January, 2004 claiming entitlement to a sum of Rs. 2,10,26,153/- from the judgment debtor as being due and payable on 9th December, 2003. This matter was adjourned on the first date of hearing on 4th February, 2004 to enable the counsel for the judgment debtor to make submissions. Thereafter, on 6th February, 2004, an adjournment was prayed on behalf of the decree holder on the ground that some talks of settlement were going on. Again on 19th February, 2004, adjournment was sought at the instance of the decree holder. On 5th of March, 2004, the counsel for the judgment debtor has pointed out on record that some payments have already been made by the judgment debtor. Finally, on the 6th July, 2004, the following order was recorded at the instance of the parties:

06-07-2004 Present: Mr. Harish Malhotra for the decree holder Mr. Tarun Johri and Ms. Neha Jain for the judgment debtor Ex. P. No. 18/2004 Learned Counsel for the judgment debtor states that the entire decretal amount stands paid to the decree holder, a statement of which has also been furnished to the counsel for the decree holder. Mr. Malhotra seeks short adjournment to have instructions in the matter.

8. It becomes necessary at this stage to notice the contemporaneous facts which have occurred during this period. On the 29th April, 2004, the judgment debtor had addressed a letter to the decree holder enclosing a statement of what were the payment dues as per the statement dated 27th May, 2003 and also the dates of the payments made by the judgment debtor. An amount was also mentioned in this communication purporting to be towards the interest on the delayed payment of the installments purportedly "as advised" by the decree holder. This communication deserves to be considered in extenso and reads thus:

M/s Morgan Securities and Credit Pvt. Ltd.

53, Friends Colony (East),

New Delhi

Dear Sir,

With reference to the Settlement Agreement dated 27th May, 2003 we hereby enclose herewith Pay Order No. 212597 dated 29.04.2004 for Rs. 25,00,000/- drawn in your favor on ICICI Bank, New Delhi in lieu of Cheque No. 502085 dated 25.12.2003 issued in your favor from ICICI Bank, New Delhi. We also give herewith the details of payment due as per settlement and date of payment by us.

Ch. No.	Date	Amt. Paid	Balance Paid	vide DD No.	Dated	Drawn on bank
502081	25/08/2003	25.00	25.00	0.00	326946	23/08/2003
502082	25/09/2003	25.00	6.25	0.00	138273	28/11/2003
502083	25/10/2003	25.00	25.00	0.00	209550	26/2/2004
502084	25/11/2003	25.00	25.00	0.00	217796	13/4/2004
502085	25/12/2003					

25.00	25.00	0.00	212597	29/4/2004	ICICI	502087	25/01/2004	25.00	25.00
0.00	502087	25/01/2004	ICICI	502088	25/02/2004	25.00	25.00	0.00	193737
17/02/2004	ICICI	502089	25/03/2004	25.00	25.00	0.00	502089	25/03/2004	
502090	25/04/2004	16.09	16.09	0.00	502090	25/04/2004	216.09	216.09	NIL

The interest on delayed payment of installments worked out to Rs. 610350/- (for calculation see Annexure) but we are making payment of interest of Rs. 644687/- as advised by you for which also we enclose a Pay Order No. 212598 dated 29.04.2004 for Rs. 5,40,707/- drawn in your favor on ICICI Bank, New Delhi after deducting TDS of Rs. 103980/-. With this we request you to withdraw the execution petition filed in the Delhi High Court and also the cases filed u/s 138 of the Negotiable Instruments Act.

There is no dispute that the pay order mentioned in the letter was actually received by the decree holder. On this letter, at the time of receipt thereof, the following endorsement was made by the decree holder:

Received without prejudice, subject to reconciliation and realisation of cheque pay orders.

9. It appears that the statement made in this Court on 6th July, 2004, adverted to this communication. It cannot possibly be disputed on behalf of the decree holder that it had been adequately put to notice with regard to the contention of the judgment debtor in respect of the amount which was due and payable by it as also the amount which had been tendered by it. It is not the decree holder's case that the cheques/pay orders mentioned in the letter dated 29th April, 2004 were not received by it and banked for encashment.

10. It is noteworthy that apart from the statement made by the judgment debtor in court that on the 10th of September, 2005, the judgment debtor had filed EA No. 347/2005 u/s 47 of the Code of Civil Procedure, 1908 raising objections on behalf of the judgment debtor. Apart from other objections relating to the merits of the amount awarded to the decree holder, in paras 11 and 12 of the application, the judgment debtor had stated thus:

11. That the decree holder further coerced the judgment debtor in paying a further sum of Rs. 6,44,687/- towards interest payable on the delayed payment of installments via pay order drawn on ICICI Bank, New Delhi bearing no. 212598 dated 29th April, 2004 for Rs. 5,04,707/- after deducting a sum of Rs. 1,03,980/- as tax at source.

12. That on 29th April, 2004 the judgment debtor made a request to the decree holder to withdraw the Execution Petition No. 18/2004 as all the money due to them were paid and also to withdraw the cases filed u/s 138 of the Negotiable Instruments Act, though the case u/s 138 N.I. Act was withdrawn but the decree holder continued to proceed with the present execution proceedings.

13. On 6th July, 2004 the counsel of judgment debtor submitted to this Hon'ble Court that the entire decretal amount stands paid to the decree holder and the

statement of payment was also handed over to the counsel for the decree holder who in turn sought for short adjournment to have instruction in the matter from the decree holder and the matter remains pending since then. The fact that the decree holder has received all the money due under the said award/decreed has not been disputed since then.? No reply was ever filed even to this application by the judgment debtor.

11. However, it appears that the objections filed by the judgment debtor in this case were similar to the objections which had been raised by it by way of EA Nos. 296/2005 and 324/2005 in Execution Petition no. 13/2004, another Execution Petition filed by the present decree holder against the same judgment debtor. Four questions were framed by the court on the objections raised. These were heard and decided against the judgment debtor by the judgment dated 17th July, 2006 passed in E.A. Nos. 296/2005 and 324/2005 in Execution Petition No. 13/2004 In view of the findings given by the court in those objections, E.A. No. 347/2005 in the present proceedings was also dismissed on 17th July, 2006.

12. It is noteworthy that the judgment debtor had filed objections based on the payment made by it and the four questions noticed in the judgment which were decided. However, there was no adjudication of the statement made by the judgment debtor in the present execution petition to the effect that it had satisfied the decree.

13. It appears that there was an error in noticing the number of the application which was heard and reserved for passing orders on the 15th of December, 2005. The same becomes apparent on a reading of the order recorded on 17th July, 2006 in the present matter wherein the court has held that the issues arisen in E.A. No. 347/2005 were identical to the issues which arose in the applications being E.A. Nos. 296/2005 and 324/2005 in Execution Petition No. 13/2004 Since those objections had been rejected by a detailed separate judgment, for the same reason, E.A. No. 347/2005 was also dismissed. It is Therefore apparent that it was not E.A. No. 326/2005 which was heard and order reserved there on 15th December, 2005.

14. Not a single communication has been placed by the decree holder before this Court repudiating any of the assertions made by the judgment debtor in his letter dated 29th April, 2004 According to the judgment debtor, it had not only paid the entire decretal amount when it paid a sum of Rs. 25 lakhs but had also paid the amount of interest which was due and payable on the delayed payment, when on the advise of the decree holder seeking the amount of Rs. 6,44,687/-, it had paid the amount of Rs. 5,40,707/- after reduction of the TDS of Rs. 1,03,980/-.

15. No dispute was ever raised with regard to the statement of accounts tendered by the judgment debtor in this communication. On the contrary, despite the endorsement by the judgment debtor on this communication on 29th April, 2004 and time having been taken by the counsel for the decree holder before

this Court on 6th July, 2004, the statement made by the judgment debtor was not repudiated nor anything to the contrary was placed before this Court.

16. The record shows that the matter was adjourned on 10th August, 2004; 10th September, 2004; 15th February, 2005; and 19th May, 2005. The judgment debtor had also filed a reply to E.A. No. 326/2005 as back as on 12th December, 2005 urging the afore noticed facts after due service of the advance copy. In para 2 (v) and (vi), the judgment debtor had again stated thus:

2(v). with a view to amicably settle its outstanding dues, the judgment debtors, prior to and during the pendency of the present execution proceedings, paid to the decree holder the decretal amount of Rs. 2,16,09,454/- adjudged under the award by 29.4.2004 Along with a sum of Rs. 6,44,687/- (including TDS) towards interest for delayed payment of installments as advised by the decree holder as per the agreed interest rate. The details of such payments along with the last installment were sent to the decree holder vide letter dated 29.4.2004, a copy whereof (duly acknowledged by the decree holder) is annexed hereto and marked as Annexure "R-1". Thus, the decretal amount under the consent award having been fully satisfied, nothing survived in the present execution proceedings which now became liable to be dismissed;

(vi). the above satisfaction of the decree was duly informed to this Hon"ble Court during the course of hearing dated 6.7.2004 A statement of such satisfaction was also furnished to the counsel for the decree holder who sought a short adjournment to have instructions in the matter. More than one and a half years have elapsed since then and the counsel for the decree holder is yet to respond to the same and instead they have now filed the instant application for issue of fresh attachment warrant.

17. The facts stated by the judgment debtor were not repudiated either by any communication to the judgment debtor or by way of even a rejoinder to the reply filed by the judgment debtor. The same was filed only after the hearing in the present application was commenced on the 3rd of February, 2007. In this rejoinder for the first time, the decree holder has stated that the judgment debtors were informed at the relevant time that the said satisfaction as was being contended by the judgment debtor was not acceptable as the interest rate, as is apparent from the calculation enclosed, was not in consonance with the arbitral award dated 21st July, 2003. It is unequivocally stated that there has never been a settlement between the decree holder and the judgment debtor after the passing of the arbitration award and any contention to the contrary raised by the judgment debtor is incorrect and is liable to be rejected.

18. Before this Court, the decree holder has placed reliance on the provisions of Rule 1 and Rule 2(A) of Order 21 of the CPC to urge that satisfaction of a decree has to follow strict procedural requirements and that the same having not been done in the instant case, the pleas of the judgment debtor are wholly misconceived. Learned Counsel for the judgment debtor has contended that as

per Section 47 of the Code of Civil Procedure, 1908, all disputes relating to payment under the decree are decided by this Court.

19. It would be appropriate to consider the applicable statutory provisions in this behalf relied upon by the decree holder before this Court. As per Rule 1 of Order 21, money payable under the decree is required to be paid to the decree holder either by deposit into the court whose duty it is to execute the decree or it can be paid out of court to the decree holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing or otherwise, in such manner as the court which makes the decree directs. The provisions of Rule 2 Order 21 which would have bearing in the instant case deserves to be noticed in extenso and read thus:

2. Payment out of court to decree holder

(1) Where any money payable under a decree of any kind is paid out of court, [or a decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree holder, the decree holder shall certify such payment or adjustment to the court whose duty is to execute the decree, and the court shall record the same accordingly.

(2) The judgment debtor [or any person who has become surety for the judgment debtor] also may inform the court of such payment or adjustment, and apply to the court to issue a notice to the decree holder to show cause, on a day to be fixed by the court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree holder fails to show cause why the payment or adjustment should not be recorded as certified, the court shall record the same accordingly.

[(2-A) No payment or adjustment shall be recorded at the instance of the judgment debtor unless:

(a) the payment is made in the manner, provided in rule 1; or

(b) the payment or adjustment is proved by documentary evidence; or

(c) the payment or adjustment is admitted by, or on behalf of, the decree holder in his reply to the notice given under Sub-rule (2) of Rule 1, or before the court.]

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any court executing the decree.

20. Where money payable under the decree is paid out of court, the decree holder is required to certify such payment or adjustment to the court whose duty it is to execute the decree and the court shall thereupon record the payment of the decretal amount. However, if information with regard to the payment is given by the judgment debtor, he is required to apply to the court to issue notice to the decree holder to show cause on a date to be fixed by the court.

Where such payment or adjustment could not be recorded as certified and if

after service of such notice, the decree holder fails to show cause why the payment or adjustment could not be recorded as certified, the court shall record the same accordingly.

21. Morgan Securities Credit Pvt. Ltd., the decree holder has challenged the action of the judgment debtor in not having filed an appropriate application, pleading payment and satisfaction of the decree on which the court was required to issue a notice to show cause to the decree holder. It is stated that the oral statement made on behalf of the judgment debtor in court is insufficient and does not meet the mandatory requirements of the statute and consequently, it cannot be contended that the judgment debtor had placed the facts relating to payment in satisfaction of it.

22. I find that apart from the oral statement made on 6th July, 2004, the judgment debtor had also mentioned these facts in the reply which was filed by it on 12th December, 2005 and in E.A. No. 347/2005 filed on 10th September, 2005. The judgment debtor had sought dismissal of the execution petition in E.A. No. 347/2005 on these facts. Certainly, the facts being pleaded by the judgment debtor of having paid the decretal amount and having satisfied the decree were placed before this Court in writing and the decree holder had been given opportunity to meet the same.

23. In E.A. No. 347/2005, the judgment debtor had made a prayer for dismissal of the execution petition. The question Therefore arises as to whether in these facts it can be contended that the judgment debtor had made substantial compliance with the requirement of Rule 2(2) of Order 21 of the Code of Civil Procedure, 1908 or not.

24. It is well settled that rules of procedure are hand maiden to the ends of justice. Processual jurisprudence shall not override the substantial requirements of law. The principal purpose and intention of sub-rule 2 of Rule 2 of Order 21 of the Code of Civil Procedure, 1908 is to put the decree holder to notice of the claim by the judgment debtor of having satisfied the decree.

25. Law mandates that the decree holder has to be given an opportunity to show cause or meet the claim of the judgment debtor. In the facts which have been noticed in the instant case, it cannot possibly be urged that the decree holder had not been put to notice or was not aware of the judgment debtor's plea to the effect that it had satisfied the decree. It had ample opportunity to contest the claim of the judgment debtor that the decree stood satisfied. The matter has remained pending.

26. The manner in which the court would record satisfaction or adjustment within the meaning of Order 21 Rule 2(2) of the Code of Civil Procedure, has been the subject matter of judicial scrutiny in several judicial pronouncements. The courts have held that objections embodying the plea of satisfaction, would serve the purpose of Order 21 Rule 2. The statute only requires the judgment debtor to inform the court of payment or adjustments and apply to the court to issue a

notice to the decree holder to show cause. No particular mode of giving the information is prescribed in the Rule. Article 125 of the Limitation Act prescribes the limitation of 30 days as a period within which the judgment debtor should bring the payment or the adjustment to the notice of the executing court. The aim of the statute is to ensure that the executing court is not troubled with the controversy relating to payment or adjustment which are not certified or recorded. The essential conditions of this order are that intimation should be given to the court within the specified time and that the decree holder is given an opportunity to place his case before the court. There is nothing in the language of the rule which prevents the information envisaged being presented by any means of an objection petition. The Code does not prescribe any particular format in which the court is required to issue notice to the decree holder. For the purposes of this rule, in my view, the requirement of rule would be satisfied if the decree holder has notice of the request of the judgment debtor to have the payment or adjustment recorded by the court. There would be substantial compliance with the term of Order 22 Rule 2 even if the counter or objections filed by the judgment debtor contained a plea of satisfaction or the adjustment of the decree and that is served on the decree holder, who is thus afforded an opportunity to show cause against such certification. (Ref: Chandi Charan Chakravarti Vs. Panchanand Pandit, 24 Mad.L.J. 541 Alathoor Badruddin v. Gulam Moiden; AIR 1935 Bom 304 Ganga Dihal Rai Vs. Ram Oudh and Others Abid Husain Vs. Kunj Behari Lal,

27. It is noteworthy that the decree holder is already before the court. When a copy of the objection and reply of the judgment debtor is served on the decree holder, in my view, there would be no longer any need to specifically or separately apply to the court for issuance of notice to the decree holder. The spirit, intendment and object of the legislation is required to be taken into account. Insistence upon an application by the judgment debtor and issuance of notice would certainly amount to paying undue regard to the form rather than to the substance and would deprive the judgment debtor of the right given by Order 21 Rule 2.

The view I have taken is also supported by the pronouncement of the Full Bench of the High Court of Andhara Pradesh Reported at Pagadala Chengayya and Another Vs. Noothanakalva Chenga Reddy, entitled Pagadala Changayya and Anr. v. Nootenakalva Chenga Reddy.

28. In the instant case, the judgment debtor had orally made a statement before this Court on the 6th July, 2004 that the entire decretal amount stands paid to the decree holder and the statement thereof had been furnished to the decree holder through counsel. This oral statement was made beyond 30 days of 29th April, 2004 when the payment was allegedly made by the judgment debtor. This was followed up by the objections taken on 10th September, 2005 in EA No.347/2005. For the reason that the same is beyond the statutorily prescribed period of limitation and for the view which is taken herein on the facts of the

case, it is not necessary to examine as to whether the payment in the instant case would require to be certified in accordance with Order 21 Rule 2. However, the contention of the decree holder that the judgment debtor was required to file a specific application claiming satisfaction of the decree, cannot be accepted.

29. The first time when the issue with regard to the payments being in satisfaction of the decree in the letter dated 29th April, 2004 of the judgment debtor has been repudiated by the decree holder is not by way of a communication in reply to it but is contained in the rejoinder which has been filed only on 3rd February, 2007. The decree holder has for the first time also disputed having given any advise as has been claimed by the judgment debtor in the letter dated 29th April, 2004

30. I find that apart from a bald assertion to this effect, there are no averments with regard to the date, time or manner of the advise or the occasion. I see no occasion for the decree holder to advise payment of interest at a rate lower than the rate awarded in the decree. From the several pleadings filed by the judgment debtor before this Court as well as a close reading of the letter dated 29th April, 2004 also, it is not possible to hold that the payment of Rs. 6,44,687/- had been advised by the decree holder. This application has also been filed before the contention of the judgment debtor was accepted or payment by it certified as satisfaction of the decree. Therefore, it is not possible to hold that the payment made by the judgment debtor with the letter dated 29th April, 2004 was in full and final settlement of the decree.

31. The further question which has been raised is as to the impact of delay on the part of the decree holder to repudiate the claim of the judgment debtor in the letter dated 29th April, 2004 or the delay which has occurred even after such a statement was made on court record on 6th July, 2004 Having regard to the liability under the decree, the decree holder would be expected to react immediately on receipt of such a communication, if any amount was due and payable to it. Certainly, no fault can be attributed to the judgment debtor for not having effected the payment after it had served the letter on the decree holder on 29th April, 2004 and thereafter. For this reason the judgment debtor cannot be compelled to make payment of interest for the period between 29th April, 2004 and 3rd February, 2007 and thereafter till adjudication on the present application by this Court.

32. Detailed submissions have been made by the judgment debtor before this Court with regard to the cheques which have been relied upon by the decree holder. It has been pointed out that besides the present execution petition, the decree holder has filed Execution Petition No. 13/2004 against M/s More pen Laboratories in respect of a decree against it. M/s More pen Laboratories had agreed to pay certain amounts to the decree holder.

33. With regard to the liability of M/s More pen Laboratories, by a letter dated 5th April, 2004, the present judgment debtor had tendered 12 post dated

cheques to the decree holder on the stipulation that ?we hereby give you the following post-dated cheques from ICICI Bank Ltd. with an understanding that the same will be banked only if the respective cheques issued by M/s More pen Laboratories is/are not honoured by the HDFC Bank Ltd. It is to be understood clearly that the cheques issued by the judgment debtor from ICICI Bank Ltd. will be returned to the company as and when the corresponding cheques of M/s More pen Laboratories is/are cleared or honoured by HDFC Bank Ltd. or as and when the pay order of the same is handed over to you?.

34. The judgment debtor has placed before this Court also a letter dated 24th December, 2004 from the More pen Laboratories wherein it is stated thus:

...We have paid you a sum of Rs. 35 lakhs (Rupees Thirty Five Lakhs only) vide our letter dated 23rd December, 2004 and please find enclosed herewith a pay order no. 266245 dated 24.12.2004 for Rs. 15,00,000/- (Rupees fifteen lakhs only) drawn on ICICI Bank Ltd. in favor of M/s Morgan Securities and Credits Pvt. Ltd. towards balance amount of installment due in November 2004 and with this the installment fully paid. Kindly acknowledge the receipt of the above pay order and return the following post dated cheques which we had issued to you earlier.

More pen Laboratories Cheque no. Dated Amount (Rs. in lakhs) 365758 20.11.2004 50.00 Blue Coast Hotels and Resorts Ltd. Cheque no. Dated Amount (Rs. in lakhs) 842625 30.11.2004 50.00

Thanking you,

Sd/-

Yours faithfully,

for More pen Laboratories Limited

35. There is no dispute that the decree holder received an amount towards the dues of More pen Laboratories. However, it had returned only 10 such post-dated cheques and failed to return the remaining two cheques to the present judgment debtor. According to the judgment debtor, one of such cheques was fraudulently attempted to be encased by the decree holder which was dishonoured on 16th August, 2005.

36. The judgment debtor has contended that the decree holder had no right to bank this cheque and the dishonouring thereof does not create any right in favor of the decree holder or any liability against the judgment debtor so far as the present execution petition is concerned.

37. The stand taken by the decree holder in its rejoinder in answer to these contentions is not supported by any document. It has been submitted that the cheques were banked on the requests and representations of the judgment debtor which submissions are not supported by any document and in fact, are contrary to the communications which have been noticed hereinabove. I Therefore, find force in the submission of the judgment debtor so far as the

encashment of the cheques and its dishonouring of 12th August, 2005 is concerned.

38. In view of the above, it has to be held that the payment made on 29th April, 2004 is not based on any advise of the decree holder and that the decree dated 21st July, 2003 is required to be complied with.

39. In view of the afore-noticed discussion, the judgment debtor will be liable for interest up to 29th April, 2004 However, for the period after 29th April, 2004, the same shall not be construed as a period of delay by the judgment debtor and it shall not be liable for any interest or any amount which is found due or payable.

40. It is noteworthy that the judgment debtor has contended payment and satisfaction of the decree. The same has been disputed by the decree holder. Certainly, there are disputes with regard to the payment made and the amounts due.

41. The decree holder has placed its calculation along with the present application as Annexure "A". I Therefore give time of four weeks" to the judgment debtor to place its calculations of what would be due and payable in terms of the decree dated 21st July, 2003 to the decree holder up to 29th April, 2004 and make payment thereof within a further period of four weeks. This application is allowed to this extent and in the above terms.